

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michael Drumm

DEFENDANTS

Morningstar, Inc.

(b) County of Residence of First Listed Plaintiff San Francisco, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Chicago, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

William Gaus
Dillingham & Murphy LLP
225 Bush Street, 6th Floor
San Francisco, CA 94104-4207
415-397-2700

Attorneys (If Known)

Michael E. Wilbur
Cook Roos Wilbur Thompson LLP
221 Main Street, Suite 1600
San Francisco, CA 94105
415-362-7071

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	310 Airplane	610 Agriculture	422 Appeal 28 USC 158	400 State Reapportionment
120 Marine	315 Airplane Product Liability	620 Other Food & Drug	423 Withdrawal 28 USC 157	410 Antitrust
130 Miller Act	320 Assault, Libel & Slander	625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	430 Banks and Banking
140 Negotiable Instrument	330 Federal Employers' Liability	630 Liquor Laws	820 Copyrights	450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	340 Marine	640 R.R. & Truck	830 Patent	460 Deportation
151 Medicare Act	345 Marine Product Liability	650 Airline Regs.	840 Trademark	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	350 Motor Vehicle	660 Occupational Safety/Health	SOCIAL SECURITY	480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	355 Motor Vehicle Product Liability	690 Other	861 HIA (1395ff)	490 Cable/Sat TV
160 Stockholders' Suits	360 Other Personal Injury	LABOR	862 Black Lung (923)	810 Selective Service
190 Other Contract		710 Fair Labor Standards Act	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
195 Contract Product Liability		720 Labor/Mgmt. Relations	864 SSID Title XVI	875 Customer Challenge 12 USC 3410
196 Franchise		730 Labor/Mgmt. Reporting & Disclosure Act	865 RSI (405(g))	890 Other Statutory Actions
		740 Railway Labor Act	FEDERAL TAX SUITS	891 Agricultural Acts
		790 Other Labor Litigation	870 Taxes (U.S. Plaintiff or Defendant)	892 Economic Stabilization Act
		791 Empl. Ret. Inc. Security Act	871 IRS - Third Party 26 USC 7609	893 Environmental Matters
				894 Energy Allocation Act
				895 Freedom of Information Act
				900 Appeal of Fee Determination Under Equal Access to Justice
				950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. section 1332, 28 U.S.C. sections 1441 and 1446: This is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE
July 11, 2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ORIGINAL

NDC-JS44

1 COOK | ROOS | WILBUR | THOMPSON LLP
2 MICHAEL E. WILBUR, CBN 152361
221 Main Street, Suite 1600
San Francisco, California 94105
3 Telephone: 415-362-7071
Facsimile: 415-362-7073

4 Attorneys for Defendant
5 MORNINGSTAR, INC.

FILED

03 JUL 11 PM 3:04

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

MSW

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

CV 08

3362

11
12 MICHAEL DRUMM,

13 Plaintiff,

14 v.

15 MORNINGSTAR, INC. and DOES 1-10
16 inclusive,

17 Defendants.
18

) Case No.:

) NOTICE OF REMOVAL

TEH

19 Defendant Morningstar, Inc., pursuant to 28 U.S.C. §§ 1441 and 1446, submits this Notice of
20 Removal of this lawsuit to the United States District Court for the Northern District of California, and
21 states:

22 1. On June 9, 2008 Plaintiff Michael Drumm filed a lawsuit against Morningstar, Inc. in
23 the Superior Court of the County of San Francisco, designated as Case No. CGC 08-476132.
24 Morningstar, Inc. was served with the Summons and Complaint on June 13, 2008. Copies of the
25 process and pleadings served on Morningstar, Inc. are attached to this Notice as Exhibit 1.

26 2. Morningstar, Inc. is an Illinois corporation, organized under the laws of the State of
27 Illinois, with its principal place of business in Illinois. Accordingly, for purposes of 28 U.S.C. §
28 1332(c)(1), Morningstar, Inc. is a citizen of the State of Illinois.

1 3. Upon information and belief, Plaintiff is now, and was at the time this action was
2 filed, a citizen and resident of California.

3 4. This lawsuit is a civil action alleging claims under Cal. Govt. Code 12940, Cal. Labor
4 Code §§ 201 and 203 and California "public policy."

5 5. This lawsuit is removable under 28 U.S.C. §§ 1441 and 1446 in that it is a civil action
6 between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00,
7 exclusive of interest and costs, as Plaintiff seeks damages "for lost compensation, pain and suffering
8 in excess of \$10 million[.]" Moreover, in his Complaint, Plaintiff acknowledges that Morningstar,
9 Inc. is a corporation "headquartered in Chicago, Illinois," thereby acknowledging the diversity of the
10 parties. Accordingly, jurisdiction in this Court is appropriate over Plaintiff's Complaint under 28
11 U.S.C. § 1332, and removal is authorized by 28 U.S.C. §§ 1441 and 1446.

12 6. Fewer than 30 days have passed since Morningstar, Inc. received the lawsuit by
13 service of process. Accordingly, the deadline for filing this Notice of Removal under the statutes of
14 the United States has not expired.

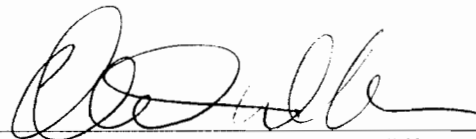
15 7. On July 10, 2008 defendant Morningstar, Inc. filed an Answer in the Superior Court.
16 A copy of the Answer is attached hereto as Exhibit 2.

17 8. A copy of this Notice of Removal has been filed in the Superior Court of the County
18 of San Francisco.

19 Dated: July 11, 2008.

20 COOK | ROOS | WILBUR | THOMPSON LLP

21
22
23 By



MICHAEL E. WILBUR
Attorneys for Defendant
MORNINGSTAR, INC.

24
25
26 P071008sjsNoticeofRemoval.doc

PROOF OF SERVICE VIA U.S. MAIL

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18, and not a party to the action. I am employed in the City and County of San Francisco, State of California, in which county the within-mentioned mailing occurred. My business address is that of Cook | Roos | Wilbur | Thompson LLP, 221 Main Street, Suite 1600, San Francisco, California 94105.

On July 11, 2008, I served a true copy of the attached document titled exactly **NOTICE OF REMOVAL** by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

William Gaus
Barbara L. Harris Chiang
Dillingham & Murphy LLP
225 Bush Street, 6th Floor
San Francisco, CA 94104-4207

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2008 at San Francisco, California.


Sandra Savage

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, bar number, and address): William Gaus (SBN 54999) Dillingham & Murphy, LLP 225 Bush Street, Sixth Floor San Francisco, CA 94104 TELEPHONE NO.: 415-397-2700 FAX NO.: 415-397-3300 ATTORNEY FOR (Name): Plaintiff Michael Drumm		FOR COURT USE ONLY <div style="text-align: center; border: 1px solid black; padding: 5px;"> ENDORSED FILED Superior Court of California County of San Francisco </div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">JUN 9 - 2008</div> <div style="text-align: center; font-weight: bold;">GORDON PARK-LI, Clerk</div> <div style="text-align: center;">By: <u>CRISTINA BAUTISTA</u> Deputy Clerk </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NUMBER: <u>CGC-08-476132</u> JUDGE: DEPT:
CASE NAME: DRUMM v. MORNINGSTAR, INC. and DOES 1-10, Inclusive		CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 9, 2008

William Gaus (SBN 54999)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUMMONS
(CITACION JUDICIAL)

COPY

SUM-100

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MORNINGSTAR, INC. and DOES 1-10, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MICHAEL DRUMM

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street

San Francisco, CA 94102

CASE NUMBER - 08 - 476132
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William Gaus (SBN 54999)

415-397-2700

415-397-3300

Dillingham & Murphy, LLP

225 Bush Street, Sixth Floor

San Francisco, CA 94104

DATE:

(Fecha)

JUN 9 - 2008

GORDON PARK-LI

(Secretario)

CRISTINA E. BAUTISTA

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): MORNINGSTAR, INC.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

COPY

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 9 - 2008

GORDON PARSE
BY GORDON PARSE, Clerk
JASE MANAGEMENT - HALTISTA
Deputy Clerk

NOV 7 - 2008 - 9 AM

DEPARTMENT 212

DILLINGHAM & MURPHY, LLP
WILLIAM GAUS (SBN 054999)
BARBARA L. HARRIS CHIANG (SBN 206892)
225 Bush Street, 6th Floor
San Francisco, California 94104-4207
Telephone: (415) 397-2700
Facsimile: (415) 397-3300

Attorneys for Plaintiff
MICHAEL DRUMM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

MICHAEL DRUMM,

Plaintiff,

v.

MORNINGSTAR, INC. and DOES 1-10,
INCLUSIVE,

Defendants.

CASE NO. 08 - 476132

COMPLAINT FOR DISCRIMINATION,
TERMINATION IN VIOLATION OF
PUBLIC POLICY, AND UNPAID
WAGES

JURY TRIAL DEMANDED

COMES NOW Plaintiff MICHAEL DRUMM ("Plaintiff") and hereby complains and
alleges as follows:

PARTIES

1. Plaintiff is a citizen of the State of California, and is a resident of the City and
County of San Francisco.

2. Plaintiff is informed and believes that Defendant MORNINGSTAR, INC.
("Defendant MORNINGSTAR") is a corporation with its headquarters in Chicago, Illinois.
Plaintiff worked for Morningstar from his home office in San Francisco, California.

3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
Does and therefore sue these Defendants by such fictitious names. Plaintiff will amend upon
ascertainment of true names or capacities. Plaintiff is informed and believes that the fictitiously-
named Defendants are responsible in some manner for the occurrences herein alleged and that

1 Plaintiffs' damages as herein alleged were proximately caused by or contributed to by such
2 Defendants.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over this action. Venue is appropriate in the Superior
5 Court of California, County of San Francisco because the unlawful employment practices
6 complained of herein were committed in the City and County of San Francisco, and is also the
7 county in which Plaintiff worked.

8 **FACTS COMMON TO ALL CAUSES OF ACTION**

9 5. Plaintiff hereby incorporates by reference paragraphs 1 through 4 of this
10 Complaint and make them part of this instant cause of action as though fully set forth herein.

11 6. Plaintiff was employed by Defendant MORNINGSTAR beginning or about
12 December 2001 through October 31, 2007, in San Francisco, California as a Sales Director in the
13 Institutional Data SBU.

14 7. From the beginning of plaintiff's employment to the end he was among the top
15 performers in his position. In many of his performance evaluations, plaintiff was the top
16 performer among all of the Institutional Sales Directors. Prior to his termination plaintiff had no
17 warnings, suspensions or other disciplinary proceedings. Additionally, in the last two years of his
18 employment, plaintiff received year-end performance bonuses for outstanding sales results.

19 8. One of plaintiff's largest accounts was up for renewal on or about October 31,
20 2007. Plaintiff conducted substantially all of the negotiations for this renewal over an extended
21 period of time prior to October 31, 2007, resulting in an agreement over a new contract worth in
22 excess of \$6,000,000 to MORNINGSTAR. The amount of the commission to plaintiff would be
23 approximately \$100,000.00.

24 9. In mid-October, 2007, plaintiff's sales manager informed him that he would be
25 removed from the account. The account was given to another Sales Director who did not add any
26 substantive terms to the renewal agreement. Two weeks later, plaintiff was informed, by his sales
27 manager, that his employment with MORNINGSTAR was terminated. He was given no warning,
28 or severance, or payment for unused vacation.

1 10. At the time of his termination, Plaintiff was the top performer among
2 institutional directors excluding the account referred to in paragraph 8, earning in a mid six-figure
3 income. Plaintiff's termination drastically reduced his earning potential.

4 11. MORNINGSTAR has averred that it discovered romantic email correspondence,
5 sent outside of normal work hours between plaintiff and another male, suggesting a romantic
6 relationship. MORNINGSTAR has averred that this correspondence showed a "distraction from
7 his work in the months prior to his termination."

8 12. The above-recited unlawful actions of Defendants were done with malice, fraud,
9 oppression, and in reckless disregard of Plaintiff's rights under the Fair Employment and Housing
10 Act ("the FEHA").

11 13. On June 6, 2008, and within one year of the date of the discrimination committed by
12 Defendant, Plaintiff filed a charge of discrimination with the California Department of Fair
13 Employment and Housing ("DFEH"). A copy of this charge is attached hereto, marked Exhibit A,
14 and is incorporated by reference.

15 14. On June 6, 2008 the DFEH issued to Plaintiff a notice of right to bring a civil action
16 against Defendant MORNINGSTAR based on the charge that is Exhibit A to this complaint. A
17 copy of the notice of right of action is attached hereto, marked Exhibit B, and incorporated by
18 reference.

19 15. MORNINGSTAR failed to pay plaintiff commission in excess of \$100,000.00 that
20 were due and owing on the date of termination. To date MORNINGSTAR has failed to
21 compensate plaintiff for the outstanding commissions.

22 16. As of October 31, 2007, plaintiff had accrued six weeks of vacation, which
23 MORNINGSTAR failed to pay at the time of discharge. To date MORNINGSTAR has failed to
24 compensate plaintiff for six weeks of accrued vacation.

25 **FIRST CAUSE OF ACTION**

26 **(DISCRIMINATION)**

27 17. Plaintiff hereby incorporates by reference paragraphs 1 through 16 of this Complaint
28 and make them part of this instant cause of action as though fully set forth herein.

1 18. The actions complained of constitute discrimination in violation of Cal. Govt. Code
2 § 12940.

3 **SECOND CAUSE OF ACTION**

4 **(FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION)**

5 19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this Complaint
6 and make them part of this instant cause of action as though fully set forth herein.

7 20. The actions complained of constitute a failure to take all reasonable steps to prevent
8 harassment from occurring in violation of California Government Code § 12940. Furthermore,
9 before the harassment occurred, MORNINGSTAR failed to take all reasonable steps to prevent
10 such harassment from occurring.

11 **THIRD CAUSE OF ACTION**

12 **(TERMINATION IN VIOLATION OF PUBLIC POLICY)**

13 21. Plaintiff hereby incorporates by reference paragraphs 1 through 20 of this Complaint
14 and make them part of this instant cause of action as though fully set forth herein.

15 22. The actions complained of constitute termination in violation of public policy.

16 **FOURTH CAUSE OF ACTION**

17 **(FAILURE TO MAKE IMMEDIATE PAYMENT OF WAGE UPON DISCHARGE,
18 WAITING TIME PENALTIES, LABOR CODES 201 AND 203)**

19 23. Plaintiff hereby incorporates by reference paragraphs 1 through 22 of this Complaint
20 and make them part of this instant cause of action as though fully set forth herein.

21 24. MORNINGSTAR willfully and intentionally failed to pay wages earned and unpaid
22 at the time of plaintiff's discharge. Plaintiff is entitled to unpaid compensation, but to date has not
23 received such compensation.

24 25. Additionally, MORNINGSTAR willfully and intentionally failed to pay
25 commissions that became due and owing after plaintiff's termination.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

28 1. For damages for lost compensation, pain and suffering in excess of \$10 million

dollars;

2. For punitive damages in an amount to be determined at trial;
3. For interest on the sum of damages awarded, calculated from October 31, 2007 to the date of judgment;
4. For waiting time penalties;
5. For reasonable attorneys' fees and cost of suit incurred herein, and
6. For such other relief as the court deems proper.

Dated: June 9, 2008

DILLINGHAM & MURPHY, LLP
WILLIAM GAUS
BARBARA L. HARRIS CHIANG

By:

Attorneys for Plaintiff
MICHAEL DRUMM

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200708A5161-00

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

DRUMM, MICHAEL

TELEPHONE NUMBER (INCLUDE AREA CODE)

(415)859-9409

ADDRESS

69 MIZPAH STREET

CITY/STATE/ZIP

SAN FRANCISCO, CA 94131

COUNTY

SAN FRANCISCO

COUNTY CODE

075

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

MORNINGSTAR, INC.

TELEPHONE NUMBER (Include Area Code)

(415)859-9409

ADDRESS

69 MISPAH STREET

DFEH USE ONLY

CITY/STATE/ZIP

SAN FRANCISCO, CA 94131

COUNTY

SAN FRANCISCO

COUNTY CODE

075

NO. OF EMPLOYEES/MEMBERS (if known)

1500

DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)

10/31/2007

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on 10/31/2007,
the following conduct occurred:☒ termination☐ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☐ demotion☐ denial of transfer☐ denial of equal pay☐ harassment☐ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☒ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☐ constructive discharge (forced to quit)☐ retaliation☐ impermissible non-job-related inquiry☐ other (specify) _____

by MORNINGSTAR, INC.

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of:

☐ sex☐ national origin/ancestry☐ disability (physical or mental)☐ retaliation for engaging in protected☐ age☐ marital status☐ medical condition (cancer or

activity or requesting a protected

☐ religion☒ sexual orientation☐ generic characteristic

leave or accommodation

☐ race/color☐ association☐ other (specify) _____State of what you
believe to be the
reason(s) for
discriminationMORNINGSTAR TERMINATED ME AFTER DISCOVERING EMAIL CORRESPONDENCE SENT OUTSIDE OF NORMAL WORK HOURS BETWEEN ME AND ANOTHER
MALE, SUGGESTING A ROMANTIC RELATIONSHIP. MORNINGSTAR CLAIMS THAT THIS CORRESPONDENCE SHOWED A "DISTRACTION FROM [MY] WORK IN
THE MONTHS PRIOR TO [MY] TERMINATION."I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit the
U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever
is earlier.I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or
reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters
stated on my information and belief, and as to those matters I believe it to be true.

Dated 06/06/2008

At San Francisco

DATE FILED: 06/06/2008

DFEH-300-030 (02/08)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

Ex B

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1515 Clay Street, Suite 701
(510) 622-2973
www.dfeh.ca.gov



June 06, 2008

DRUMM, MICHAEL
69 MIZPAH STREET
SAN FRANCISCO, CA 94131

RE: E200708A5161-00
DRUMM/MORNINGSTAR, INC.

Dear DRUMM, MICHAEL:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective June 06, 2008 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

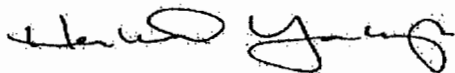
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Herbert Yarbrough
District Administrator

cc: Case File

JOE MANSUETO
CEO
MORNINGSTAR, INC.
225 WEST WACKER DR.
CHICAGO, IL 60606

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: NOV-07-2008

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. Defendant asserts that neither the Complaint, nor any purported cause of action alleged therein against Defendant, states facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Mitigation of Damages)

2. Defendant asserts, on information and belief, that Plaintiff's claims for damages in the form of backpay and benefits are barred by Plaintiff's failure to diligently seek other employment or to otherwise mitigate his damages.

THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. Defendant asserts that Plaintiff's Complaint, and each purported claim for relief alleged therein, is barred, in whole or in part, to the extent that Plaintiff failed to exhaust his administrative remedies as to Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Punitive Damages)

4. Defendant asserts that Plaintiff's Complaint, and each purported cause of action alleged therein, fails to allege facts sufficient to allow recovery of punitive or exemplary damages against Defendant.

FIFTH AFFIRMATIVE DEFENSE

(Protection From Excessive Fines)

5. Defendant asserts that Plaintiff's Complaint, to the extent it seeks punitive or exemplary damages, violates the right of Defendant to protection from "excessive fines" as provided in article I, section 17 of the Constitution of the State of California, and violates the right of Defendant to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and in the California Constitution, and therefore fails to state a claim upon which punitive or exemplary damages may be awarded.

SIXTH AFFIRMATIVE DEFENSE

(Procedural Due Process)

6. Defendant asserts that Plaintiff's Complaint, to the extent that it seeks punitive or exemplary damages, violates the right of Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and under the Constitution of the State of California, and therefore fails to state a claim upon which punitive or exemplary damages may be awarded.

SEVENTH AFFIRMATIVE DEFENSE

(Limitations Period)

7. Defendant asserts that Plaintiff's Complaint, and each purported claim for relief alleged therein, is barred to the extent that it seeks recovery for conduct outside the applicable limitations period, including, but not limited to, California Government Code section 12960(d).

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

8. Defendant asserts that Plaintiff's Complaint and each and every cause of action alleged therein is barred because any of the conduct that is alleged to be actionable was taken as a result of conduct by the Plaintiff and Plaintiff is thus estopped to assert any cause of action against Defendant.

NINTH AFFIRMATIVE DEFENSE

(Acts and Omissions)

9. Defendant asserts that Plaintiff's Complaint and each and every cause of action alleged therein is barred because Plaintiff caused, contributed to, or increased by his own actions or omissions any damages he is claiming to have suffered as a result of Defendant's alleged acts.

TENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

10. Defendant asserts that any recovery on Plaintiff's Complaint, and each purported cause of action alleged therein, is barred or reduced by after-acquired evidence of Plaintiff's misconduct that has been or may be discovered.

ELEVENTH AFFIRMATIVE DEFENSE

(Mixed Motive)

11. Defendant alleges that, to the extent that unlawful reasons were motivating factors, which Defendant denies, legitimate reasons, standing alone, would have induced Defendant to make the same employment decisions.

TWELFTH AFFIRMATIVE DEFENSE

(Setoff)

12. Defendant alleges that, to the extent Plaintiff recovers any monies from collateral sources, Defendant is entitled to a setoff against any damages Plaintiff would otherwise recover.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendant hereby further gives notice that it intends to rely on such other and further defenses as may become available during discovery in this action. Defendant reserves the right to amend its answer to assert any such defenses.

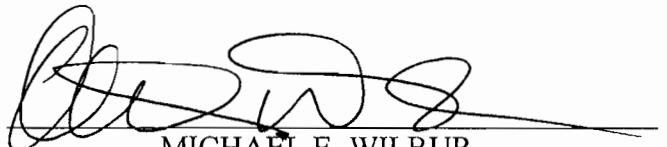
WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by reason of his Complaint in this action and that the Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendant;
3. That Defendant be awarded its costs of suit and attorney's fees incurred in defense of this action, as allowable by law; and
4. For such other and further relief as the court deems just and proper.

Dated: July 10, 2008.

COOK | ROOS | WILBUR | THOMPSON LLP

By



MICHAEL E. WILBUR
Attorneys for Defendant
MORNINGSTAR, INC.

Answer

Case Name: Michael Drumm v. Morningstar, Inc.
Case No: CGC-08-476132

PROOF OF SERVICE VIA U.S. MAIL

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18, and not a party to the action. I am employed in the City and County of San Francisco, State of California, in which county the within-mentioned mailing occurred. My business address is that of Cook | Roos | Wilbur | Thompson LLP, 221 Main Street, Suite 1600, San Francisco, California 94105. I am readily familiar with the business practices of Cook | Roos | Wilbur | Thompson LLP for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence will be deposited with the United States Postal Service on the same day it is collected and processed by Cook | Roos | Wilbur | Thompson LLP in the ordinary course of business.

On July 10, 2008 at the offices of Cook | Roos | Wilbur | Thompson LLP, 221 Main Street, Suite 1600, San Francisco, California 94105, I served the following document(s):

DEFENDANT'S ANSWER TO COMPLAINT

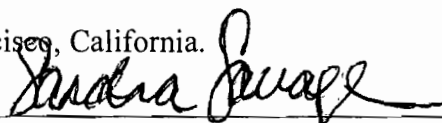
by placing a copy in a separate envelope for each addressee named below, with the name and address of the person served shown on the envelope as follows:

William Gaus
Barbara L. Harris Chiang
Dillingham & Murphy LLP
225 Bush Street, 6th Floor
San Francisco, CA 94104-4207

and by sealing the envelopes and placing them for collection and mailing with postage thereon fully prepaid in accordance with the ordinary business practices of Cook | Roos | Wilbur | Thompson LLP.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 10, 2008 at San Francisco, California.


Sandra Savage

0-posmailSuperior.doc